the others, *Steel* v. *Dixon* (1881) 17 Ch. Div. 825; but it seems he can avoid the liability only by contract with the other sureties, as in *Durbin* v. *Kinney* (1890) 19 Ore. 71, though he may by his own inequitable conduct toward the other sureties deprive himself of the right, as in *Block* v. *Estes* (1887) 92 Mo. 318.

Since *Deering* v. *Winchelsea*, supra, it has been uniformly held that persons may be cosureties and liable to contribution although each assumed his obligation at a different time, by a different instrument, and without knowledge that there were other sureties, and it should not affect the question that they became sureties through the fraud of the debtor, provided the creditor has acted in good faith and parted with value. *McBride* v. *Potter-Lovell Co.* (1897) 169 Mass. 7; *Whitlock* v. *National Bank* (N. Y. 1899) 29 Misc. 84. The principal case seems unsound in denying recovery altogether, though the amount of recovery might be affected by the broker's lien.

Avoidance of Deed by Incompetent.—Since the decision in the case of *Price* v. *Berrington* (1850) 3 Macn. & G. 485, it has been the settled law of England that the deed of one insane, but not judicially declared incompetent cannot be avoided either by himself on regaining reason, or by his committee without a return of the consideration. The case was decided upon no direct authority, but by an extension of the rule of *Niell* v. *Morley* (1804) 9 Ves. 478, that equity will not set aside the contract of an incompetent when the parties cannot be placed in statu quo. A recent case in Connecticut, *Coburn* v. *Raymond* (1904) 57 Atl. 116, while affirming the English rule, calls attention to the fact that American authorities are not in harmony, and that Massachusetts in repudiating that rule has been followed in several States. *Gibson* v. *Soper* (1856) 6 Gray 279; *Hovey* v. *Hobson* (1866) 53 Me. 451, though opposed by the balance of authority. The Massachusetts courts base their rule upon the analogy of the incompetent to the infant and urge that each is entitled to the equal protection of the law.

However similar the helplessness of the incompetent may be to that of the infant, the positions of these two in the English common law have been essentially different. The deeds and contracts of each, in the absence of mala fides in the one with whom they deal, are voidable and not void. But the plea of infancy was always heard at law, whereas, insanity was no defence, since, by a rule of Littleton's, one could not be permitted to stultify himself. The infant upon arriving at majority might by re-entry regain possession of the lands which he had deeded away during minority, and his deed could be met with the plea of infancy. 2 Coke on Littleton 247b; but the insane person could not re-enter, and the avoidance of his deed might be accomplished only by the king acting in his behalf, or by his heir. 2 Coke on Littleton 247a. Littleton's rule was justly criticised as absurd and mischievous, and it has been partially repudiated. Where the condition of the insane person was known to the one dealing with him at the time, the insanity might be pleaded at law to avoid a contract, *Dane* v. *Kirkwall* (1838) 8 C. & P. 679, and apparently even

when it was unknown to avoid a specialty, *Faulder* v. *Silk* (1811) 3 Campb. 126; but insanity could not be pleaded in avoidance of a contract made by one dealing with the insane person in good faith and with no knowledge of the latter's condition, *Brown* v. *Jaddrell* (1827) 1 Moody & M. 105. In the last case, however, the plea was heard in equity and the incompetent might there avoid his contract upon a return of the consideration, *Niell* v. *Morely*, supra; and when he was compelled to go into equity for additional relief from his deed, by the same rule of equity a return of the consideration was required, *Price* v. *Berrington*, supra.

Littleton's rule has not been generally adopted in this country, 2 Kent's Com. § 451; Story's Eq. Jur. § 225 and note. It would therefore seem that its outgrowth, the rule requiring a return of the consideration, should not have been more generally adopted; but that historically considered, the incompetent should have been allowed to avoid his deed at law without first returning the consideration, leaving to the other party a right to afterwards recover any portion of the consideration remaining in the incompetent's hands, *Matthieson* v. *McMahon* (1876) 38 N. J. L. 544, or to his action in quasi-contract in a proper case, Keener on Quasi-Contracts 20. See *Shaw* v. *Boyd* (Pa. 1819) 5 Serg. & R. 309.

INJUNCTIONS TO RESTRAIN TICKET BROKERS.—For some years the railroad companies have been waging a war of extermination against the ticket brokers. In several States statutes have been passed to force them out of business, but more often the courts have been appealed to. In 1897 the Circuit Court for the Northern District of Tennessee granted an injunction restraining certain brokers from buying and selling unused portions of reduced rate tickets, *Nashville, C. & St. L. R. Co.* v. *McConnell*, 82 Fed. 65, and since then there have been several other cases decided by courts of inferior jurisdiction, though with conflicting results. *Railroad* v. *Kinner* (D. C. 1902) 47 Ohio Law Bull. 760; *Hudson R. R. Co.* v. *Reeves* (N. Y. 1903) 41 Misc. 490. The first time the question seems to have been before an appellate court was in a recent case in Missouri, *Schubach* v. *McDonald* (1903) 78 S. W. 1020. The railroads alleged that they intended to issue special rate excursion tickets to the St. Louis Exposition which by their terms were to be void if transferred, and it appeared by the answer of the brokers that they already had in their possession unused portions of excursion tickets which they were offering for sale. The court restrained the sale of these existing tickets, the buying and selling of other existing tickets, and the buying and selling of the tickets that may be issued during the Exposition, on the ground that each ticket created a property right in the railroads which, under the circumstances equity should protect. In *Nashville, etc. R. Co.* v. *McConnell*, supra, the injunction was granted on the ground that the right of the railroad to do business was interfered with, while in *Hudson R. R. Co.* v. *Reeves*, supra, the judge held that no wrong was threatened. There seems to be no doubt, however, that a fraud is committed when a name is forged in order to obtain